IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1135 of 1998
To
FIRST APPEAL No. 1139 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAND ACQUISITION OFFICER NO.1
Versus
NATVARBHAI GOVINDBHAI PATEL AND ANOTHER

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Appearance :
MR ND GOHIL, AGP for Appellant.
MR PRAKASH K JANI for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 18/07/2006

COMMON ORAL JUDGMENT

Since the learned Judge of the Reference Court has decided Land References by common judgement against which these appeals are filed, all these First Appeals are disposed of, with the consent of the learned

advocates, by this common judgement.

The present group of First Appeals are filed by Special Land Acquisition Officer No.1, Mehsana, challenging the judgement and order passed by Third Extra Assistant Judge, Mehsana dated 1-8-1997 in Land Acquisition Reference Nos.2218/92 to 2222/92. By common judgement all the aforesaid Land Acquisition References were partly allowed by the learned Judge of the reference Court. The State was directed to pay additional amount of compensation at the rate of Rs.7.95 ps., per sq.mtr. together with interest as well as solatium.

The lands in question were sought to be acquired for the public purpose of irrigation. Notification under Section 4 of the Act was published on 12-4-1990. Thereafter, notification under Section 6 was published on 30-12-1990. The Special Land Acquisition Officer declared his award of the Act on 30-3-1991. The Special Land Acquisition Officer awarded the compensation at the rate of 0.85 ps. per sq.mtr. to the claimants. Since the claimants were not satisfied by the said award, at their request, reference was made under Section 18 to the District Court for additional compensation. The claimant had prayed for Rs.10/- per sq.mtr.

Learned trial Judge after framing necessary issues at Exh.8, and after recording the evidence came to the conclusion that the compensation awarded by the Special Land Acquisition Officer is not adequate. The learned trial Judge has fixed the amount at Rs.8.80 ps., per sq.mtr., as appropriate market value of the land on the date of notification under Section 4 of the Act. After deducting the amount awarded by the Special Land Acquisition Officer, learned trial Judge awarded additional amount of Rs.7.95 ps., per sq.mtr. Learned trial

Judge also awarded interest as well as solatium as per the provisions of the Land Acquisition Act.

Being dissatisfied with the aforesaid order of the learned trial Judge, the State has preferred these First Appeals through Special Land Acquisition Officer under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code.

Mr.N.D.Gohil, learned AGP has attacked the judgement of the learned trial Judge mainly on the ground of fixing market price of the land in question at the rate of Rs.8.80 ps., per sq.mtr. Mr.Gohil submitted that learned Judge has erred in deducting only 25% of agricultural expenditure and, according to him, the fixation of market price at the rate of Rs.8.80 ps., is on higher side. He further submitted that at least 50% of amount should have been assessed towards agricultural expenditure instead of 25%.

Mr.Jani, learned advocate for the claimants submitted that even though the demand on the part of the claimants was at the rate of Rs.10/- per sq.mtr. learned trial Judge has fixed the value of the land at Rs.8.80 ps. per sq.mtr. He submitted that looking to the fertility of the land and considering the Pani Patrak and other revenue record, learned Judge has rightly assessed the amount at the aforesaid rate. He also submitted that in most of the appeals, additional amount which is required to be paid by the State is between Rs.15,502/- to Rs.25,114.05 ps., and only in one First Appeal additional amount awarded by the learned trial Judge comes to Rs.69,395.55 ps. Mr.Jani also submitted that in series of judgements, Division Bench as well as learned Single Judge of this Court have taken the view that if the amount involved in First Appeal is small, this Court may not interfere with the order of the

trial Court in First Appeals. He submitted that amount of additional compensation which is less than Rs.30,000/- is considered to be small amount. He submitted that at least in four First Appeal, the amount awarded by the trial Court is less than Rs.30,000/- and only in one First Appeal, which arises out of the judgement delivered in Land Acquisition Reference No.2222/1992, the amount awarded is Rs.69,395.55 ps.

However, in my view, instead of rejecting these First Appeals on the ground of small claim, it would be just and proper to decide all these appeals on their own merits.

I have heard both the learned counsel in detail and I have also gone through the record and proceedings, which is made available for the perusal of this Court.

On behalf of the claimants, a solitary witness, namely, Natvarbhai Govindbhai Patel, was examined at Exh.12. Said witness was the applicant of Land Acquisition Reference No.2218/1992. Land of the aforesaid claimant which was situated in Survey No.468/5 was acquired for the purpose of Dhoria – Satrodi Kaans Yojna (making way for passing of water). The aforesaid witness had given evidence on behalf of all the claimants. Said witness has stated in his evidence that he used to take crops of three seasons. Description of such crops is given in his Chief Examination. According to said witness, he used to take Juvar, Bajri, Jute, Raydo etc. According to said witness, large quantity of crop used to be cultivated in the said land. Said witness has stated in his evidence that he used to sell the crops at agricultural produce market at Kadi and the annual income which he used to get was Rs.18,000/- to Rs.20,000/- per vigha. According to the said witness, about Rs.3,000/- to Rs.4,000/- was required to be spend towards the agricultural expenditure. He also

produced copy of revenue record at Exh.13 to Exh.18. In his cross – examination, he has admitted that there is no evidence to show that there is a tube-well facility available in the land in question, though he had stated that there is a tube-well in Survey No.468/5, which is in the name of his brother – Nagarbhai. He has denied the suggestion that he is cultivating only one crop per year. Said witness has stated in his cross-examination that all his family members are engaged in doing agricultural activity and, therefore, expenditure for agricultural operation is not on higher side.

On behalf of the State no witness was examined nor any evidence was produced.

Learned trial Judge has appreciated the documentary evidence in the form of revenue record at Exh.13 to Exh.18 as well as the oral evidence of the witness of the claimant for finding out the correct market value of the land in question. It is no doubt true that the claimant has stated in his evidence that the land in question is sandy land. It is also not in doubt that the overall evidence given by the said witness is about the nature of crops being cultivated by the claimants. However, deposition of the witness has remained unchallenged as no serious cross-examination of the said witness is done nor Government has produced any evidence to the contrary. Under these circumstances, after considering the revenue record as well as after considering the oral evidence of the witness of the claimant, learned trial Judge has reached the figure of net income from the agricultural crops.

In my view, finding of the learned trial Judge is not required to be disturbed by this Court as there is no contrary evidence on record. Learned trial Judge has found that there is some exaggeration in the say

of the claimant, however, after considering the nature of crops cultivated by the claimant, learned trial Judge has fixed the annual income at the rate of Rs.2800/- per vigha. Thereafter, learned trial Judge deducted 25% towards agricultural expenditure and net income was fixed at Rs.2,100/- per vigha per annum and after applying the multiplier of ten, learned trial Judge has fixed market value of the land in question at the rate of Rs.8.80 ps. per sq.mtr. Since no evidence is produced on behalf of the State, there is no reason to dis-believe the evidence of the claimant, which is believed by the learned trial Judge before whom the aforesaid witness was examined.

It is not possible to agree with the submission of learned AGP, Mr.Gohil, that expenditure should have been fixed at 50%, especially when there is nothing on record to accept the say of learned AGP. No other points are canvassed before me.

Therefore, in my view, the market value fixed by the learned trial Judge is just and proper and the order of the learned trial Judge is not required to be disturbed by this Court in these First Appeals.

Considering the evidence of sole witness examined on behalf of the claimants, in my view, fixation of market value of the land in question by the learned trial Judge is not required to be disturbed, hence, all these First Appeals are dismissed with no order as to costs.

Record and proceedings to be sent back.

(P.B.MAJMUDAR, J.)

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